

Internal Revenue Service
memorandum

CC:NER:BRK:TL-N-8172-98
AJMandell

date: FEB 24 1999

to: Chief, Examination Division, Brooklyn
Attn: [REDACTED], Team Coordinator, [REDACTED]

from: District Counsel, Brooklyn

[REDACTED]
subject: U.I.L. 6501.08-10

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Issue:

Whether the treasurer of [REDACTED] ([REDACTED]) had the authority to sign a Form 872 (consent to extend the time to assess tax) after the corporation was dissolved?

Facts:

The facts, as we understand them from the information you provided, are as follows:

[REDACTED] was incorporated in Fresno, California on [REDACTED].

On [REDACTED] a Form 872, which extended the statute of limitations to [REDACTED] for the corporate return of [REDACTED], was secured for the [REDACTED] and [REDACTED] taxable years. The Form 872 was signed on October 9, 1998 by [REDACTED], the treasurer of [REDACTED]. This Form 872 has not yet been countersigned by the Service. [REDACTED] had previously signed, on [REDACTED], a Form 872 for [REDACTED], for the [REDACTED] year, which extended the statute of limitations to [REDACTED] and which was countersigned by the Service on [REDACTED].

On the Form 872 that was executed by [REDACTED] on [REDACTED], there is a notation that [REDACTED] was dissolved on [REDACTED]. A copy of the final return was secured for the period [REDACTED] to [REDACTED] showing that [REDACTED] was liquidated pursuant to I.R.C. § 332 on [REDACTED]. [REDACTED] signed the return as "treasurer".

The [REDACTED] return was timely filed with an extension on [REDACTED]. The first Form 872 that was signed by Mr. [REDACTED] on [REDACTED] extended the time to assess until [REDACTED]. The 1995 return was filed with an extension on [REDACTED].

Discussion:

The period of limitation for assessment against a taxpayer under I.R.C. section 6501(a) is three years after the return is filed, except where the Commissioner and the taxpayer have consented in writing, prior to the expiration of the period prescribed by section 6501(a), to assessment after such time. If the consent is properly executed, section 6501(c)(4) provides that the tax may be assessed at any time prior to the expiration of the period agreed upon, which period may also be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

The length of the period of time that a corporation continues to exist after liquidation as a body corporate depends upon the law of the State where the corporation was created. Title Co. v. Wilcox Bldg. Corp., 302 U.S. 120 (1937). The Tax Court, using the Supreme Court's holding in Title Co., supra, applied the law of the state of Wisconsin to determine whether a Form 872 executed after the dissolution of a corporation was valid because Wisconsin was the state in which the corporation was incorporated. Badger Materials, Inc. v. Commissioner, 40 T.C. 725 (1963).

[REDACTED] was incorporated in California, so we must turn to California law. California law provides that a corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it, and enabling it to collect and discharge obligations, dispose of and convey its property and collect and divide its assets, but not for the purpose of

continuing business except so far as necessary for the winding up thereof. Cal. Corp. Code § 2010(a) (Deering 1999).¹

California statutes provide in pertinent part that the powers and duties of the directors and officers after commencement of a dissolution proceeding include, but are not limited to, the following acts in the name and on behalf of the corporation:

To continue the conduct of the business insofar as necessary for the disposal or winding up thereof; and in general, to make contracts and to do any and all things in the name of the corporation which may be proper or convenient for the purposes of winding up, settling and liquidating the affairs of the corporation. Cal Corp. Code § 2001(b) (Deering 1999); Cal. Corp. Code § 2001(h) (Deering 1999).²

In states in which a dissolved corporation continues in existence for purposes of winding up its affairs, any authorized officer of the corporation may sign a consent during the period the corporation continues in existence under state law. Rev. Rul. 83-41, 1983-1 C.B. 349.

¹Although some states provide that the power of shareholders, directors, and officers to act is restricted to the protection of remedies, rights, and claims upon which suits or other proceedings are commenced within two years after the date of dissolution (e.g. Wisconsin, as discussed in the Badger case, supra.) there is no such time limitation in California. In any event, the 872 in the instant case was signed within two years of the corporate dissolution.

²There is also case law for the proposition that the validity of the waiver must be determined under the laws of the state where the 872 was executed, which in this case would be New York. Lesser v. Commissioner, 47 T.C. 564 (1967). However, the result under New York law would be the same, as pursuant to New York law, a dissolved corporation shall proceed to wind up its affairs, and its directors, officers and shareholders may continue to function for the purpose of winding up the affairs of the corporation in the same manner as if the dissolution had not taken place. N.Y. Business Corporation Law § 1005(a)(1) (McKinney 1986); N.Y. Business Corporation Law § 1006(a) (McKinney 1986).

CONCLUSION

Based on the facts discussed above, assuming that [REDACTED] was an officer and/or director of [REDACTED] at the time of dissolution, then it appears, under California (or New York) law, that he had the authority to sign the Form 872 on behalf of the corporation and that the Form 872 is valid.

This opinion is based upon the facts set forth herein. You should be aware that, under routine procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

If you have any additional questions, please call the undersigned at (516) 688-1701.

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By:


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